



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2004

Mr. Steve Aragón
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2004-6432A

Dear Mr. Aragón:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206050A.

The Texas Health and Human Services Commission (the "commission") received a request for all information maintained by the commission pertaining to Mercy Hospital of Laredo doing business as Mercy Health Center; Mercy Regional Medical Center; Mercy Health System of Texas, Inc.; Sisters of Mercy Health Systems, St. Louis, Inc.; Laredo Medical Group; the ASAP Nursing Agency; Maria Del Rosario Ames, M.D./P.A.; Juan F. Montalvo, M.D./P.A.; Antonio Rodriguez, M.D./P.A.; JoAnn Hernandez, R.N.; and Maria Tadeo, R.N. This office issued Open Records Letter No. 2004-6432 (2004) on July 30, 2004, in response to the commission's request for a decision.

It has come to our attention that our ruling in Open Records Letter No. 2004-6432 was in error with respect to Medicaid provider numbers contained in the submitted information. We have re-examined our ruling and determined that Open Records Letter No. 2004-6432 should be withdrawn. The present decision shall substitute for the ruling issued as Open Records Letter No. 2004-6432.

You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that member of public may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and

encompasses information made confidential by other statutes. You contend that the information submitted as Exhibit A is confidential under section 531.1021 of the Government Code, which pertains to fraud or abuse investigations conducted by the commission's office of inspector general ("OIG"). You advise that the OIG is responsible for "the detection and investigation of fraud and abuse by health care providers who contract to provide health care services under the Medicaid program." *See* Gov't Code §§ 531.102, .1021. Section 531.1021(g) provides as follows:

All information and materials subpoenaed or compiled by the [OIG] in connection with an investigation are confidential and not subject to disclosure under [the Public Information Act], and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the [OIG] or its employees or agents involved in the investigation conducted by the [OIG], except that this information may be disclosed to the office of the attorney general and law enforcement agencies.

Gov't Code § 531.1021(g). You state that the documents in Exhibit A were compiled by the commission in connection with a pending Medicaid fraud and abuse investigation, and you advise that this information is maintained by the OIG. Based on your representations, we determine that the information submitted as Exhibit A is confidential under section 531.1021(g) of the Government Code and must be withheld in its entirety pursuant to section 552.101 of the Government Code.¹

We next address your arguments with respect to the remaining submitted information. You contend that information identifying Medicaid recipients is excepted under section 552.101 as information made confidential by law. Sections 12.003 and 21.012 of the Human Resources Code prohibit the disclosure of information concerning clients of a state plan for assistance, except for a purpose directly connected with the administration of the plan. *See* Hum. Res. Code §§ 12.003, 21.012; *see also* 40 T.A.C. §§ 71.4 (information may be released if it is for the purposes reasonably necessary for administering the assistance program); Open Records Decision Nos. 584 (1991), 166 (1977). Section 12.003 provides in relevant part:

(a) Except for purposes directly connected with the administration of the department's assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, or any information concerning, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties.

¹ Based on this finding, we need not reach your other claimed exceptions for Exhibit A.

Hum. Res. Code § 12.003(a). The term “assistance” in sections 12.003 and 21.012 of the Human Resources Code includes “all forms of assistance and services for needy persons authorized by Subtitle C.” Hum. Res. Code § 11.001(4); *see also id.* § 31.001 *et seq.* (subtitle C, pertaining to assistance programs).

In Open Records Decision No. 584 (1991), this office determined that “[t]he inclusion of the words ‘or any information’ juxtaposed with the prohibition on disclosure of the names of the department’s clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients’ names and addresses.” *Id.* at 3. Consequently, it is the specific information pertaining to individual clients, and not merely the clients’ identities, that is made confidential under section 12.003. *See also* Hum. Res. Code § 21.012(a) (requiring provision of safeguards that restrict use or disclosure of information concerning applicants for or recipients of assistance programs to purposes directly connected with administration of programs).

You indicate that the remaining documents contain information pertaining to individual recipients of Medicaid benefits. We find that release of such information in this instance is not a release for purposes directly connected with the administration of the Medicaid program. *See* 40 T.A.C. §§ 71.4, 71.11-71.14; *see also* 42 C.F.R. § 431.302 (setting forth purposes directly related to state Medicaid and Medicare administration). Thus, we determine that the commission must withhold specific information pertaining to individual Medicaid recipients pursuant to section 552.101 of the Government Code in conjunction with section 12.003 of the Human Resources Code.

You have also marked information in the remaining documents that you contend is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in pertinent part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov’t Code § 552.130. We have marked the motor vehicle title and registration information that the commission must withhold under section 552.130 of the Government Code.

You also seek to withhold Medicaid provider numbers under section 552.136 of the Government Code. Section 552.136 provides in relevant part:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov’t Code § 552.136. Upon review, we find you have established that the Medicaid provider numbers at issue constitute “access devices” for purposes of section 552.136. We therefore determine the commission must withhold Medicaid provider numbers in the remaining documents pursuant to section 552.136 of the Government Code.

Finally, you ask this office to issue a previous determination to the commission for information made confidential under section 531.1021(g) of the Government Code. We decline to issue a previous determination at this time.

In summary, the commission must withhold the information submitted as Exhibit A in its entirety under section 552.101 of the Government Code in conjunction with section 531.1021(g) of the Government Code. The commission must withhold information in the remaining submitted documents pertaining to individual Medicaid recipients pursuant to section 552.101 in conjunction with section 12.003 of the Human Resources Code. We have marked information that must be withheld under section 552.130 of the Government Code. Medicaid provider numbers must be withheld under section 552.136 of the Government Code. The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within thirty calendar days. *Id.* § 552.324(b). In order to get the

full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within ten calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within ten calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Saldivar', with a stylized flourish at the end.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 206050

Enc: Submitted documents

c: Mr. Raymond P. Ausrotas
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(w/o enclosures)